United Nations S/2003/721

Security Council

Distr.: General
18 July 2003

Original: English

Letter dated 16 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 May 2003 (S/2003/535).

The Counter-Terrorism Committee has received the attached third report from China submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for this letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Chinese]

Letter dated 9 July 2003 from the Chargé d'affaires a.i. of the Permanent Mission of China to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to the letter of the Chairman of the Counter-Terrorism Committee dated 28 April 2003 (S/AC.40/2003/MS/OC.245), I have the honour to transmit herewith the further supplementary report of the Government of the People's Republic of China on the implementation of Security Council resolution 1373 (2001) concerning counter-terrorism.

(*Signed*) **Zhang** Yishan
Chargé d'affaires a.i. and Ambassador
Permanent Mission of China to the United Nations

Further supplementary report by China on the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 The CTC has agreed on further questions and comments for the consideration of the Government of China with regard to the implementation of the resolution, as set out in this section.

1.2 It is stated in the first report of China in reply to subparagraph 3 (d) that China has signed the International Convention for the Suppression of the Financing of Terrorism. In the supplementary report of China in reply to subparagraph 3 (d) no reference is made to the steps initiated by China for its ratification/accession and the domestic law it proposes to put in place to implement the Convention. The CTC would be grateful for a progress report on this matter.

- China is currently actively studying the question of the ratification of the International Convention for the Suppression of the Financing of Terrorism, and will be glad to report to the Counter-Terrorism Committee on progress made in this regard.

1.3 The CTC would be grateful for a progress report on the development of the Measures for the Control of Payments Transactions Reporting. Would these Measures cover other professionals engaged in financial transactions in mainland China?

- The Administrative Rules for the Reporting of Large-Value and Suspicious RMB Payment Transactions were promulgated in the form of a decree by the Governor of the People's Bank of China on 3 January 2003. The rules apply to policy banks, commercial banks, urban and rural credit cooperatives and their unions, and postal savings institutions licensed by the People's Bank of China and established within the territory of the People's Republic of China.

1.4 In addition to having formed an "anti-money-laundering task force", has China adopted any specific laws defining and dealing with money-laundering? China states that Hong Kong has drafted regulations to stop the laundering of bribes. Will these regulations also apply to the laundering of proceeds from other crimes?

- Article 191 of the Criminal Law of the People's Republic of China states that anyone who commits any of the following acts to disguise or conceal the source and nature of what he/she knows is illegal proceeds from narcotics crimes, organized crimes of the underworld, or crimes of smuggling, or gains derived from such proceeds, shall be sentenced to up to five years of fixed-term imprisonment or criminal detention, such sentence to be accompanied or replaced by a fine in the amount of 5 to 20 per cent of the money laundered, and the illegal proceeds from the commission of such crimes and the gains derived therefrom shall be confiscated; in serious cases, the sentence shall range from 5 to 10 years of fixed-term imprisonment and a fine in the amount of 5 to 20 per cent of the amount of money laundered: (1) providing funds accounts; (2) assisting in the conversion of property into cash or financial instruments; (3) assisting in the relocation of funds through transfers or other

means of accounts settlement; (4) assisting in the remittance of funds abroad; and (5) using other means to disguise or conceal the nature and source of the illegal proceeds from such crimes and the gains derived therefrom. An entity which commits one of the aforementioned crimes shall be liable to a fine, and its executive officers directly responsible for the crime and other personnel with direct responsibility shall be sentenced to a maximum of five years of fixed-term imprisonment or criminal detention. The aforementioned acts constitute crimes of money-laundering.

Amendment No. 3 to the Criminal Law of the People's Republic of China, promulgated in December 2001, amended article 191 of the Criminal Law to include crimes of terrorist activities as predicate offences for the crime of money-laundering.

In addition, the provisions in the Criminal Law concerning joint crimes (article 25), illegal business acts (article 225), crimes of harbouring and sheltering criminals (article 311) and crimes of concealing, transferring, purchasing or selling stolen goods (article 312) can all be invoked as grounds for establishing the criminal responsibility of money launderers and for determining their criminal punishment.

– The Rules Governing Anti-Money-laundering Efforts of Financial Institutions, the Administrative Rules for the Reporting of Large-Value and Suspicious RMB Payment Transactions, and the Administrative Rules for the Reporting by Financial Institutions of Large-Value and Suspicious Foreign Exchange Transactions, which were all promulgated by the People's Bank of China and came into effect on 1 March 2003, provide for the reporting of large-value and suspicious RMB and foreign exchange transactions.

In addition, China has also adopted other anti-money-laundering laws and regulations, including the Administrative Regulations of the People's Republic of China Governing Foreign-Funded Financial Institutions (2002), the Provisions Concerning the Real-Name Personal Savings Account System (2000), and the Interim Regulations on Cash Management (1998).

– The Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance are the two main laws of the Hong Kong Special Administrative Region combating money-laundering activities. In accordance with these ordinances, anyone who knows, or has reasonable grounds to believe, that any property represents the proceeds from drug trafficking or from any prosecutable offence committed by any person, and who nevertheless disposes of that property, is deemed to have committed a crime. In the Hong Kong Special Administrative Region, all serious offences are prosecutable offences. Serious offences include common offences as well as statutory offences specifically defined as prosecutable offences.

1.5 Article 120 of the Chinese Criminal Code is directed at terrorist activities. Does the article also apply to terrorist acts planned or financed in China which are carried out in another country?

– The Chinese Government believes that this question has already been dealt with in the previous report.

1.6 The CTC would be content to receive an outline of the measures taken by the Macao Special Administrative Region in regard to reporting obligations of suspicious transactions for professionals such as lawyers, notaries, auditors and accountants.

– The Macao Special Administrative Region has not yet taken measures to make the reporting of suspicious transactions obligatory for lawyers, notaries, auditors and accountants.

As China reported previously, the Government of the Macao Special Administrative Region is still considering whether to amend Act No. 24/98/M of 1 June 1998, which is currently in effect, to include such measures. An inter-departmental working group was established for this purpose in February 2002. The working group has begun its work on amending the current law, but it has found that it is necessary to examine not only matters relating to the amendment of Act No. 24/98/M, but also the criminal law dealing with the crime of money-laundering.

Although Act No. 24/98/M already stipulates the obligation to report suspicious transactions, a problem arises in that the special criminal law on organized crime (Law No. 6/97/M of 30 June 1997) also makes provisions for the criminal offence of money-laundering. For this reason, some members of the working group feel that the criminal act as legally defined in the latter is restrictive, specifically covering money-laundering by criminal organizations. The question requires further study in this regard.

1.7 Are there regulations in place in Macao requiring that all money transfer services should be licensed, as China reports is the case in mainland China?

– The Macao Special Administrative Region implements a licensing system for all providers of payment activities. Macao's financial system legal regime, as approved in Act No. 32/93/M, provides that all credit agencies licensed to carry out payment activities must obtain prior approval in the form of an executive order by the Chief Executive, and be registered with the Macao Monetary Authority. Furthermore, Act No. 15/97/M provides that prior approval by the Chief Executive and registration with the Macao Monetary Authority are required before a cash express delivery company can be set up.

1.8 Are there laws in place in China, including Hong Kong and Macao, criminalizing the transfer of funds that are lawfully obtained, but intended for terrorist purposes?

– According to provisions of the Criminal Law, if the person concerned knows that the legally acquired funds being transferred are to be used for terrorist activities, then such action constitutes a crime that is severely punishable by law. Article 120 of the Criminal Law states: "Anyone who finances a terrorist organization or commits terrorist activities shall be sentenced to up to five years of fixed-term imprisonment, criminal detention or control, or be deprived of political rights, plus a fine; in serious cases, the sentence shall be a minimum of five years of fixed-term imprisonment, plus a fine or confiscation of property. An entity which commits one of the crimes mentioned in the preceding item shall be liable to a fine, and its executive officers directly responsible for the crime and other personnel with direct responsibility shall be penalized in accordance with the provisions of the preceding item."

- The Hong Kong Special Administrative Region has adopted the United Nations (Anti-Terrorism Measures) Ordinance, which punishes acts of financing terrorism. In accordance with the ordinance, it is a crime for any person to directly or indirectly provide or raise funds by any means with the intention of supplying those funds to people who that person knows or has reasonable grounds to believe are terrorists or are associated with terrorists. This provision on the crime of financing terrorism applies whether or not the funds are acquired legally.

- The Macao Special Administrative Region does not as yet have any law characterizing the transfer of legally acquired funds to be used for terrorist purposes as a criminal act and prescribing corresponding punishment. Only article 289 of the Penal Code of Macao contains provisions and prescribes punishment for local terrorist criminal offences by terrorist organizations. The legal definition includes the intentional promotion of the activities of such organizations, including the activities mentioned above. The new draft criminal law dealing with terrorism defines the financing of terrorism as a criminal offence, and it follows the legal definition of this offence in the Penal Code of Macao. The new criminal law will not replace the Penal Code. The transfer of legally acquired funds to be used for terrorist purposes will therefore be classified as either a terrorist organization criminal offence or as the criminal offence of financing terrorism.

1.9 The CTC would be grateful to have an outline of the proposed measures of the Macao Special Administrative Region in regard to the freezing of funds suspected of belonging to terrorists or individuals and entities related to terrorists.

- The United Nations Security Council resolution regarding the freezing of assets belonging to organizations and individuals suspected of terrorist activities became part of the legal regime of the Macao Special Administrative Region automatically from the day it was published in the Government Gazette. Law No. 4/2002 defines failure to comply with United Nations Security Council sanctions as a criminal offence. In accordance with the Code of Criminal Procedure of Macao, a judge can now order the seizure of any funds or financial assets deposited at a financial institution in Macao if they are connected with a crime or are important for the gathering of evidence. The new criminal law dealing with terrorism mentioned above will also contain provisions similar to those in the Code of Criminal Procedure regarding the seizure of assets.

To fully implement the United Nations Security Council's sanctions resolutions as well as resolution 1373 (2001) (in particular paragraph 1 (c)), the Macao Special Administrative Region is continuing to study this matter, with a view to improving the draft on the basis of the basic rights and principles of the legal regime of the Macao Special Administrative Region. The study is based mainly on the laws of Canada and the European Union, and also takes into full consideration the twelve existing international conventions against terrorism, the resolutions of the United Nations General Assembly and the Security Council on counter-terrorism and sanctions, as well as the guidelines and other information from the Counter-Terrorism Committee of the Security Council, including in particular the document "Recurrent Issues — Briefing for member States" of 4 April 2002.

Mindful that the decision to add individuals to the list will result in a measure temporarily restrictive of political activities, the law clearly provides for the ability to bring legal action, and specifies the time when it is to come into effect as well as the substantive maximum time limit of its validity. Another balancing norm stems from the legal regime of the general civil liability of public administration, including actions of the Executive Branch. This right has been in existence in Macao for a long time, and is reconfirmed in the Basic Law of the Macao Special Administrative Region.

1.10 Do the regulations in force in China and Macao require financial institutions to record all originator information on all transactions, as reportedly is the case in Hong Kong?

- Yes.

- Mainland: (i) Account information is kept for at least five years from the date of termination of an account; (ii) Transaction records are kept for five years from the date each transaction is recorded.

- Macao: As stipulated in a Macao Monetary Authority circular, all financial institutions in the Macao Special Administrative Region must keep records of the originators of all transactions. The Guidelines for Credit Agencies on Combating Money-laundering (Circular No. 072/B/2002-DSB/AMCM) specifies the basic requirements for the opening of accounts by individual and group clients, including client background, country of original residence, line of business and occupation, source of the property, etc. These requirements are consistent with the "Know-Your-Customer" rules issued by the Basel Committee on Banking Supervision. At the same time, the Guideline on Combating Money-laundering through Large-Value Cash Transactions (Circular No. 073/B/2002-DSB/AMCM) requires financial institutions to keep appropriate records of the originators of cash transactions in amounts of more than 20,000 Macao dollars or equivalent, including certification of identity, telephone number, address and other relevant information. If there are non-account holders taking part in other transactions, the identity certification information on those non-account holders must also be recorded.

1.11 The CTC would be grateful if China could report on the progress made as regards legislation for Macao aimed at criminalizing international terrorist acts and classifying the financing of terrorism as a separate offence.

- As mentioned in the answer to question 1.8 above, there is now a draft criminal law dealing with terrorism. Covering both domestic and international terrorism, it automatically and separately classifies the financing of terrorism as a crime. The texts of the draft, in Chinese and Portuguese (official languages of the Macao Special Administrative Region), are being finalized.

1.12 The CTC would be grateful if China could explain the provisions of the laws in mainland China that prevent those who finance, plan, facilitate, or commit terrorist acts from using the territory of China as required by subparagraph 2 (d).

- As indicated in the first report from the Government of China to the Committee, the Law of the People's Republic of China on the Entry and Exit of Aliens clearly stipulates that aliens who forge, alter, or fraudulently use,

transfer or buy and sell visas or other credentials will be barred from entering and leaving China and will be held accountable under the law. This provision can be used to prevent terrorists from entering or leaving China to engage in terrorist activities.

1.13 Could China please explain how it deals with foreigners found in its territory who are accused of terrorist acts and wanted by another State. Will they be extradited even in the absence of an extradition treaty or will they be tried in China as per its laws?

– If an alien wanted by another country on charges of having committed acts of terrorism is found in China, and the country concerned makes an extradition request to China, the competent authorities of China will examine the extradition request from the requesting country in accordance with the provisions of China's extradition law. If the request meets the conditions provided for in the extradition law, China will approve the extradition.

1.14 The CTC would be grateful to know the progress achieved in China towards becoming a party to the remaining international instruments for the prevention and suppression of terrorism.

– The Government of China has consistently supported and actively participated in international cooperation to combat terrorism. Of the twelve existing international counter-terrorism conventions, China has already become party to ten and signed one (the International Convention for the Suppression of the Financing of Terrorism).

1.15 The CTC is aware that China may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of China's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373 (2001).

– The Government of China is willing to study carefully any relevant request from the Counter-Terrorism Committee.